IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20/10/2003

CORAM

THE HONOURABLE MR.JUSTICE V.KANAGARAJ

C.R.P.P.D.No. 683 of 2002

Justin Raj ... Petitioner

-Vs-

1.Susethubala Zeenath
2.Navaneethabalan Zeenath
3.Prameelabala Zeenath
4.Sindhubala Zeenath
5.Mony
6.Saraswathy
7.Dasamma
8.Charubala Zeenath
9.Lawrence
10.Rajayyan
11.Mariadas
12.Therasamma
13.Sukumari
14.John
15.Swarnam
16.Das
17.Kamalam
18.Chellan
19.Selvaraj
20.Anthonimuthu
21.John @ Varuvel
22.Arulappan
23.Mariadas
24.Lawrence
25.Vijayakumari
26.Saraswathy
27.Aru Nesabai
28.Velayudhan Pillai
29.Sadasivan
30.Malavya
31.Subbayyan
32.Ayyappan
33.Thankalakshmi
34.Nadarajan
35.Selvaraj
36.Thankaraj

37.Dhanuvilas
38.Ramadas
39.Kumaraswamy Asari
40.Mony
41.Varghese
42.Johnson
43.Anathayi
44.Rajakumari
45.Stary Bai
46.Sundaram ... Respondents

(Respondents 9 to 46
in the Civil Revision
Petition are given up)

Civil Revision Petition is filed under Section 115 of C.P.C.
praying for the relief as stated below.

!For petitioner ... Mr.K.N.Thampi

:O R D E R

The petitioner has filed the above Civil Revision Petition praying to set aside the fair and decreetal order dated 27-2-2002 in I.A.No. 576 of 2001 in O.S.No. 39 of 1996 on the file of the Court of II Additional District Munsif, Kuzhithurai and allow the Civil Revision Petition.

2. The respondents 1 to 8 have been served. Inspite of service, no representation has been made either by themselves appearing before this Court or by any counsel on their behalf and therefore, this Court is today left with no choice, but to hear the learned counsel for the petitioner and consider the materials made available on record so as to pass a fitting order in the above Civil Revision Petition.

3. In consideration of the facts pleaded what could be assessed is that the petitioner is the third party and the suit is for partition and other reliefs; that the 7th defendant in the suit has absolute right, title and possession in respect of the portions of the suit property; that the 7th defendant has also a residential building in the suit property and this defendant died and his entire right devolves on his two sons, namely, Rajamani and Johnson and the widow of one deceased Varghese; that they were also in possession of the share of the 7th defendant.

4. The petitioner would further state in his petition filed before the lower Court that while so on 29-11-2001, the said Rajamani and others conveyed 2.250 cents in the suit property and the building in his favour under document No. 1984 and thus becoming absolutely entitled to be in possession of the building and land bearing the door No. 9/59; that the area conveyed is falling under survey No.380/10.

5. The petitioner would further submit that in the sale deed, the old survey No. 65A has been mentioned by mistake, but the correct survey number is 63A, whereas the boundaries and door numbers are correctly

mentioned in the sale deed; that since the suit being for the relief of partition and separate possession, he was not a necessary party to the suit and if he is impleaded, he could work out the remedies in the suit itself; that it would also avoid multiplicity of proceedings and avoid conflicting decisions to apply and hence, would pray to implead him as the 48th defendant in the suit. The lower Court dismissed the above petition filed by the petitioner herein in I.A.No. 576 of 2001 in O.S.No. 39 of 1996, as a result of which, the petitioner has come forward to file the above Civil Revision Petition.

6. The learned counsel appearing on behalf of the petitioner herein would rely on the judgment reported in (2000) 3 M.L.J. 739 rendered in BEEBEE JOHN Vs. SHEIK HUSSAIN, wherein a single Judge of this Court has held:

"13. The expression "to settle all questions involved" used in O.1, Rule 10(2) is susceptive of liberal and wide interpretation, so as to adjudicate all the questions pertaining to the subject matter of the suit arising not only between the parties to the suit but also the third party whose presence before the Court is necessary or proper for an effective and final adjudication.

14. The power of the Court to add a party to a proceeding cannot depend solely on the question whether he has interest in the suit property. The question is, whether the right of a person may be affected if he is not added as a party. If a person is vitally interested in the litigation and ultimate decree which may be passed in the said litigation vitally affecting his rights, he may apply to be added as a party under this rule.

15. As laid down by the Supreme Court, this rule would enable this Court to add any person as a party at any stage of the proceedings even at the appellate stage, if the person whose presence before the Court is necessary in order to enable the Court to effectively and completely adjudicate upon and settle all the questions involved in the suit."

7. Though the learned single Judge has been liberal in his thinking in permitting the party to exhaust his remedy impleading the proposed party as a necessary party, still, the judgment does not deal with the law of Lispendense, since it is an admitted case in hand that during the pendency of the suit the purchase has been done by the petitioner herein and therefore, the question pertaining to the law of Lispendense has not been dealt with in the said judgment cited by the learned counsel for the petitioner.

8. However, whether the petitioner innocently purchased, without the suit pending being disclosed or not is a point for consideration. If the petitioner has purchased the property, without notice to the pending suit, then the petitioner will have a valid case to offer himself being made a party to the proceeding and if, inspite of knowledge the petitioner has gone in for the purchase of the property, he will stand a looser and this question being a question of fact it could be decided only at the time of trial and therefore, this is not the stage at which the question of Lispendense is to be gone into and therefore, in these circumstances, this Court is of the view only to permit the petitioner to participate in the further proceedings, since it is alleged that he is a purchaser of the shares of the original owner, the 7th defendant, through his successors and hence, the following order.

In result,

(i) the above Civil Revision Petition is allowed, subject to the decision of the trial Court framing a special issue to the effect of the law of Lispendense involved in the purchase of the portion of the suit properties that was originally belonging to the deceased 7th defendant and to determine the rights of parties;
(ii) the fair and decreetal order dated 27-2-2002 made in I.A.NO. 5 76 of 2001 in O.S.No. 39 of 1996 on the file of the Court of II Additional District Munsif, Kuzhithurai, is set aside;
(iii)the lower Court is also further directed to expedite the trial procedure, in view of the long pending nature of the suit, so as to deliver the judgment on merits and in accordance with law;
(iv) consequently, C.M.P.No. 5639 of 2002 is closed; and
(v) there shall be no order as to costs.

Index: Yes
Internet: Yes

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To
The II Additional District Munsif,
Kuzhithurai.

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